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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

In re REFCO INC. SECURITIES LITIGATION

Case No. 07-MD-1902 (JSR)

X

This Document Relates to:

X

KENNETH M. KRYS, et al.,

Case No. 08-CV-3065 (JSR)
Case No. 08-CV-3086 (JSR)

Plaintiffs, :

-against-

CHRISTOPHER SUGRUE, et al.,

Defendants, :

X

KENNETH M. KRYS, et al.,

Case No. 10-CV-3594 (JSR)

Plaintiffs, :

-against-

DEUTSCHE BANK SECURITIES INC., et al.,

Defendants, :

X

~~R~~ [PROPOSED] STIPULATION AND ORDER WITHDRAWING MOTIONS FOR
SUMMARY JUDGMENT AND OTHER MOTION WITHOUT PREJUDICE

WHEREAS, Plaintiffs asserted various claims against Credit Suisse Securities (USA) LLC, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, as successor-by merger to Banc of America Securities LLC, PricewaterhouseCoopers LLP ("PwC"), and Deutsche Bank Securities Inc. (collectively, the "Dismissed Defendants") in the above-captioned actions (the "Actions");

WHEREAS, on or about July 31, 2012, the Special Master, in consultation with the Court, permitted the Dismissed Defendants to file an "early" motion for summary judgment asserting a common ground for dismissal of all remaining claims against them in the Actions (the

“Early Summary Judgment Motion”), without prejudice as to their rights to file additional motions for summary judgment asserting additional grounds at a later time, as described below;

WHEREAS, on August 2, 2012, the Dismissed Defendants filed the Early Summary Judgment Motion;

WHEREAS, on August 7, 2012, PwC filed a motion to strike certain opinions of Plaintiffs’ proposed experts Michael Greenberger and David Wallace (the “PwC Expert Strike Motion”);

WHEREAS, on December 17, 2012, while the Early Summary Judgment Motion was *sub judice*, the Dismissed Defendants filed motions for summary judgment asserting additional grounds for dismissal of all remaining claims against them in the Actions (the “Second Set of Summary Judgment Motions”);

WHEREAS, the Second Set of Summary Judgment Motions¹ included (a) omnibus arguments asserted by the Dismissed Defendants and other defendants that have not been dismissed from the Actions (the “Omnibus Arguments”), and (b) separate arguments asserted by one or more of the Dismissed Defendants (the “Non-Omnibus Arguments”);

WHEREAS, also on December 17, 2012, Plaintiffs filed a motion for partial summary judgment on their claims against various defendants including but not limited to the Dismissed Defendants (“Plaintiffs’ Partial Summary Judgment Motion”);

¹ The Second Set of Summary Judgment Motions consist of the (a) Motion for Summary Judgment by Credit Suisse Securities (USA) LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Deutsche Bank Securities Inc. [*In re Refco Inc. Securities Litig.*, 07 MD 1902, docket no. 1718], which is supported by documents [*In re Refco Inc. Securities Litig.*, 07 MD 1902, docket nos. 1720, 1722, 1724, 1732-1734, 1743-1748, 1753-1758; and (b) Motion for Summary Judgment by PricewaterhouseCoopers LLP [*In re Refco Inc. Securities Litig.*, 07 MD 1902, docket no. 1719], which is supported by documents [*In re Refco Inc. Securities Litig.*, 07 MD 1902, docket nos. 1721, 1723, 1725, 1732-1734, 1743-1748].

WHEREAS, on December 26, 2012, the Court entered an Order granting the Early Summary Judgment Motion (with respect to the Dismissed Defendants) and dismissing all remaining claims against the Dismissed Defendants in the Actions (the “Dismissal Order”);

WHEREAS, the Dismissal Order provides that final judgment as to the Dismissed Defendants will issue after the Court issues a written opinion setting forth the reasons for its Dismissal Order;

WHEREAS, by Order of the Special Masters, the deadline for Plaintiffs to file memoranda in opposition to the Second Set of Summary Judgment Motions and for the Dismissed Defendants to file memoranda in opposition to Plaintiffs’ Partial Summary Judgment Motion is January 21, 2013;

WHEREAS, the deadline for the Dismissed Defendants to file reply memoranda in further support of the Second Set of Summary Judgment Motions and for Plaintiffs to file reply memoranda in further support of Plaintiffs’ Partial Summary Judgment Motion is January 31, 2013;

WHEREAS, the Special Master has issued a Report and Recommendation addressing the PwC Expert Strike Motion (the “Expert Strike R&R”); Plaintiffs have filed a limited objection to the Expert Strike R&R as to PwC and a separate limited objection as to the Grant Thornton Defendants (i.e., Grant Thornton LLP and Mark Ramler); PwC and the GT Defendants have each filed separate responses to Plaintiffs’ limited objections; and the Court has scheduled oral argument on each such objection for January 30, 2013 at 5 p.m.;

WHEREAS, Plaintiffs and the Dismissed Defendants (the “Parties”) agree that, in light of the Dismissal Order and subject to the provisions set forth below, it is unnecessary and would be a waste of time and judicial resources for the Parties to proceed with further briefing and

argument before the Special Master as to the Dismissed Defendants on the Second Set of Summary Judgment Motions and Plaintiffs' Partial Summary Judgment Motion, and for the Special Master to issue Reports and Recommendations as to the Dismissed Defendants on those motions, and for the parties to brief objections to those Reports and Recommendations, and for the Court to hear argument on those objections and thereafter decide those motions; and

WHEREAS, Plaintiffs and PwC agree that, in light of the Dismissal Order as to PwC, and subject to the provisions set forth below, it is unnecessary and would be a waste of time and judicial resources to go forward with oral argument and a decision by the Court as to the Expert Strike R&R insofar as it applies to the PwC Expert Strike Motion.

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the undersigned parties, and ORDERED by the Court, as follows:

1. Each of the Second Set of Summary Judgment Motions [*In re Refco Inc. Securities Litig.*, 07 MD 1902, docket nos. 1718-1719] is hereby withdrawn as moot, without prejudice and subject to the terms set forth in the remainder of this Stipulation and Order (but, for the sake of clarity, the Omnibus Arguments shall continue to be litigated by Plaintiffs and other defendants that have not been dismissed from the Actions; and the Joint Memorandum of Law Addressing Common Issues in Defendants' Motions for Summary Judgment, the Joint Rule 56.1 Statement in Support of Moving Defendants' Motions for Summary Judgment, and the Declaration of Luke A. Connelly in Support of Moving Defendants' Motions for Summary Judgment [*In re Refco Inc. Securities Litig.*, 07 MD 1902, docket nos. 1732-1734] are not withdrawn).

2. Plaintiffs' Partial Motion for Summary Judgment is hereby withdrawn as moot as against the Dismissed Defendants (but not as against any other defendants), without prejudice and subject to the terms set forth in the remainder of this Stipulation and Order.

3. The PwC Expert Strike Motion is hereby withdrawn as moot, without prejudice and subject to the terms set forth in the remainder of this Stipulation and Order (but, for the sake of clarity, Plaintiffs' limited objection to the Expert Strike R&R as to the GT Defendants shall continue to be litigated by Plaintiffs and the GT Defendants pursuant to the schedule ordered by the Court).

4. Plaintiffs shall have and hereby reserve the right to re-file Plaintiffs' Partial Summary Judgment Motion as against the Dismissed Defendants if and to the extent that Plaintiffs successfully appeal or challenge the Dismissal Order, resulting in its being vacated or reversed.

5. The Dismissed Defendants shall have and hereby reserve the rights to (a) re-file the Second Set of Summary Judgment Motions (including the Omnibus Arguments and Non-Omnibus Arguments) if Plaintiffs successfully appeal or challenge the Dismissal Order, resulting in its being vacated or reversed; (b) file an opposition to Plaintiffs' Partial Summary Judgment Motion if Plaintiffs successfully appeal or challenge the Dismissal Order, resulting in its being vacated or reversed, and Plaintiffs re-file Plaintiffs' Partial Summary Judgment Motion as against the Dismissed Defendants; and/or (c) file additional summary judgment motions if Plaintiffs successfully appeal or challenge the dismissal pursuant to Rule 12(b) of any claims (in addition to those addressed by the Dismissal Order) asserted in the Actions by Plaintiffs against the Dismissed Defendants.

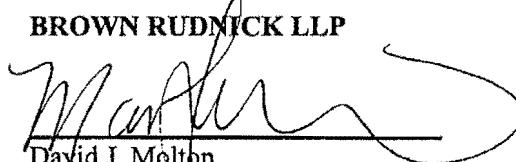
6. PwC also shall have and hereby reserves the right to re-file the PwC Expert Strike Motion; Plaintiffs shall have and hereby reserve their right to re-file their limited objection to the Expert Strike R&R as to PwC; and PwC shall have and hereby reserves its right to re-file its response to this limited objection and to seek a ruling from the Court on the Expert Strike R&R without the need for further proceedings before the Special Master, if Plaintiffs successfully appeal or challenge the Dismissal Order, resulting in its being vacated or reversed.

7. Nothing in this Stipulation or Order shall be deemed a waiver or forfeiture of any argument that any of the Parties may make in any appeal of the Dismissal Order or in any subsequent proceedings in the District Court should the Dismissal Order be vacated or reversed.

Dated: January 10, 2013
New York, New York

By:

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Attorneys for Plaintiffs

Dated: January 10, 2013
New York, New York

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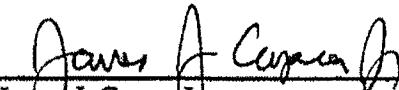

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Pierce, Fenner & Smith, Incorporated, as
successor-by-merger to Banc of America
Securities LLC*

Dated: January 10, 2013
New York, New York

KING & SPALDING LLP

By:

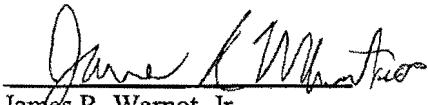

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Dated: January 10, 2013
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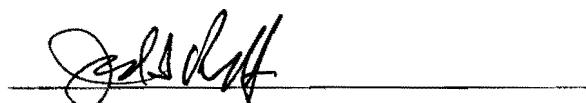
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SO ORDERED:



Dated: January 14, 2013
New York, NY